

**ASSEMBLY BILL**

**No. 768**

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**Introduced by Assembly Member Torres  
(Coauthor: Assembly Member Bonnie Lowenthal)**

February 26, 2009

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An act to amend Section 368 of the Penal Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 768, as introduced, Torres. Elder abuse.

Existing law proscribes various crimes committed against an elder or dependent adult when the person knows or reasonably should know that the victim is an elder or dependent adult related to physical abuse, including causing or permitting an elder or dependent adult to suffer or inflicting thereon unjustifiable physical pain or mental suffering and violating.

This bill would delete the language requiring that the person either know or reasonably should know that the victim was an elder or dependent adult from the definitions of those crimes. The bill would also expand those crimes to include causing or permitting an elder or dependent adult to sustain any wound or physical or psychological injury. Because this bill would expand the definitions of crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 368 of the Penal Code is amended to  
2 read:

3 368. (a) The Legislature finds and declares that crimes against  
4 elders and dependent adults are deserving of special consideration  
5 and protection, not unlike the special protections provided for  
6 minor children, because elders and dependent adults may be  
7 confused, on various medications, mentally or physically impaired,  
8 or incompetent, and therefore less able to protect themselves, to  
9 understand or report criminal conduct, or to testify in court  
10 proceedings on their own behalf.

11 ~~(b) (1) Any person who knows or reasonably should know that~~  
12 ~~a person is an elder or dependent adult and~~ who, under  
13 circumstances or conditions likely to produce great bodily harm  
14 or death, willfully causes or permits any elder or dependent adult  
15 to suffer, or inflicts thereon unjustifiable physical pain or mental  
16 suffering, *or causes or permits any elder or dependent adult to*  
17 *sustain any wound or physical or psychological injury*, or having  
18 the care or custody of any elder or dependent adult, willfully causes  
19 or permits the person or health of the elder or dependent adult to  
20 be injured, or willfully causes or permits the elder or dependent  
21 adult to be placed in a situation in which his or her person or health  
22 is endangered, is punishable by imprisonment in a county jail not  
23 exceeding one year, or by a fine not to exceed six thousand dollars  
24 (\$6,000), or by both that fine and imprisonment, or by  
25 imprisonment in the state prison for two, three, or four years.

26 (2) If in the commission of an offense described in paragraph  
27 (1), the victim suffers great bodily injury, as defined in Section  
28 12022.7, the defendant shall receive an additional term in the state  
29 prison as follows:

30 (A) Three years if the victim is under 70 years of age.

31 (B) Five years if the victim is 70 years of age or older.

32 (3) If in the commission of an offense described in paragraph  
33 (1), the defendant proximately causes the death of the victim, the  
34 defendant shall receive an additional term in the state prison as  
35 follows:

1 (A) Five years if the victim is under 70 years of age.

2 (B) Seven years if the victim is 70 years of age or older.

3 (c) ~~Any person who knows or reasonably should know that a~~  
4 ~~person is an elder or dependent adult and~~ who, under circumstances  
5 or conditions other than those likely to produce great bodily harm  
6 or death, willfully causes or permits any elder or dependent adult  
7 to suffer, or inflicts thereon unjustifiable physical pain or mental  
8 suffering, *or causes or permits any elder or dependent adult to*  
9 *sustain any wound or physical or psychological injury*, or having  
10 the care or custody of any elder or dependent adult, willfully causes  
11 or permits the person or health of the elder or dependent adult to  
12 be injured or willfully causes or permits the elder or dependent  
13 adult to be placed in a situation in which his or her person or health  
14 may be endangered, is guilty of a misdemeanor. A second or  
15 subsequent violation of this subdivision is punishable by a fine  
16 not to exceed two thousand dollars (\$2,000), or by imprisonment  
17 in a county jail not to exceed one year, or by both that fine and  
18 imprisonment.

19 (d) Any person who is not a caretaker who violates any provision  
20 of law proscribing theft, embezzlement, forgery, or fraud, or who  
21 violates Section 530.5 proscribing identity theft, with respect to  
22 the property or personal identifying information of an elder or a  
23 dependent adult, ~~and who knows or reasonably should know that~~  
24 ~~the victim is an elder or a dependent adult~~, is punishable by  
25 imprisonment in a county jail not exceeding one year, or in the  
26 state prison for two, three, or four years, when the moneys, labor,  
27 goods, services, or real or personal property taken or obtained is  
28 of a value exceeding four hundred dollars (\$400); and by a fine  
29 not exceeding one thousand dollars (\$1,000), by imprisonment in  
30 a county jail not exceeding one year, or by both that fine and  
31 imprisonment, when the moneys, labor, goods, services, or real or  
32 personal property taken or obtained is of a value not exceeding  
33 four hundred dollars (\$400).

34 (e) Any caretaker of an elder or a dependent adult who violates  
35 any provision of law proscribing theft, embezzlement, forgery, or  
36 fraud, or who violates Section 530.5 proscribing identity theft,  
37 with respect to the property or personal identifying information of  
38 that elder or dependent adult, is punishable by imprisonment in a  
39 county jail not exceeding one year, or in the state prison for two,  
40 three, or four years when the moneys, labor, goods, services, or

1 real or personal property taken or obtained is of a value exceeding  
2 four hundred dollars (\$400), and by a fine not exceeding one  
3 thousand dollars (\$1,000), by imprisonment in a county jail not  
4 exceeding one year, or by both that fine and imprisonment, when  
5 the moneys, labor, goods, services, or real or personal property  
6 taken or obtained is of a value not exceeding four hundred dollars  
7 (\$400).

8 (f) Any person who commits the false imprisonment of an elder  
9 or a dependent adult by the use of violence, menace, fraud, or  
10 deceit is punishable by imprisonment in the state prison for two,  
11 three, or four years.

12 (g) As used in this section, “elder” means any person who is 65  
13 years of age or older.

14 (h) As used in this section, “dependent adult” means any person  
15 who is between the ages of 18 and 64, who has physical or mental  
16 limitations which restrict his or her ability to carry out normal  
17 activities or to protect his or her rights, including, but not limited  
18 to, persons who have physical or developmental disabilities or  
19 whose physical or mental abilities have diminished because of  
20 age. “Dependent adult” includes any person between the ages of  
21 18 and 64 who is admitted as an inpatient to a 24-hour health  
22 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the  
23 Health and Safety Code.

24 (i) As used in this section, “caretaker” means any person who  
25 has the care, custody, or control of, or who stands in a position of  
26 trust with, an elder or a dependent adult.

27 (j) Nothing in this section shall preclude prosecution under both  
28 this section and Section 187 or 12022.7 or any other provision of  
29 law. However, a person shall not receive an additional term of  
30 imprisonment under both paragraphs (2) and (3) of subdivision  
31 (b) for any single offense, nor shall a person receive an additional  
32 term of imprisonment under both Section 12022.7 and paragraph  
33 (2) or (3) of subdivision (b) for any single offense.

34 (k) In any case in which a person is convicted of violating these  
35 provisions, the court may require him or her to receive appropriate  
36 counseling as a condition of probation. Any defendant ordered to  
37 be placed in a counseling program shall be responsible for paying  
38 the expense of his or her participation in the counseling program  
39 as determined by the court. The court shall take into consideration

1 the ability of the defendant to pay, and no defendant shall be denied  
2 probation because of his or her inability to pay.

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

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